(p. 15) "This alleged effect of Riegel's acts was . . . to deprive Brunswick of an expanded market for its metal fibers."

10. The Brief in Opposition says (p. 7) that adoption of Brunswick's position would add "another layer of litigation to antitrust cases." But when an antitrust case involves a patent where priority of inventorship depends upon the the determination in a patent interference proceeding of whether the patentee was acting fraudulently, the Patent Office has primary jurisdiction to decide whether there was fraud. That means that the antitrust suit must await the completion of the interference proceeding in any event, as the *Mt. Hood* and *Deltec* cases illustrate.*

The fact that in some cases this may take a long time is not decisive, as *Mt. Hood* also demonstrates. In this case, time was consumed by Riegel's policy of blocking in every possible way Brunswick's efforts to obtain the critical evidence. The respondent also ignores the fact that the prolonged interference proceeding was the necessary result of its deliberate attempt to steal Brunswick's invention.

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* "Even if Mt. Hood, as a protective measure, had filed this suit at the same time as it filed its petition to the ICC, Mt. Hood's antitrust claim would not have been tried any sooner than it was. As we have seen, the antitrust suit would have been stayed or dismissed." *Mt. Hood Stages, Inc. v. Greyhound Corp.*, 616 F.2d 394, 400 (9th Cir. 1980).

## CONCLUSION

For the reasons stated above and in our petition, the writ of certiorari should issue.

Respectfully submitted,

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